

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In Re: PHARMACEUTICAL
INDUSTRY AVERAGE WHOLESALE
PRICE LITIGATION**

) MDL No. 1456

) Master File No. 01-12257-PBS

) Subcategory Case. No. 06-11337

) **THIS DOCUMENT RELATES TO:**

) Hon. Patti B. Saris

) *U.S. ex rel. Ven-A-Care of the Florida Keys,*

) Magistrate Judge

) *Inc. v. Dey Inc., et al.*

) Marianne B. Bowler

) Civil Action No. 05-11084-PBS

)

**DEFENDANTS DEY, INC. AND DEY, L.P.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to the Rule 56 of the Federal Rules of Civil Procedure Defendants Dey, Inc. and Dey, L.P. (collectively, “Dey”) respectfully move this Court for an order directing the entry of judgment dismissing, in part, claims asserted against them by Plaintiff State of California and Relator Ven-A-Care of the Florida Keys, Inc. The grounds for this motion are set forth in the Defendants’ Joint Brief in Support of Their Motions for Partial Summary Judgment and Dey’s Brief in Support of its Motion for Partial Summary Judgment.

Pursuant to Local Rule 7.1(a)(2), counsel for Dey has conferred with counsel for California in a good faith effort to resolve or narrow the issues set forth herein, but has been unable to reach an agreement.

WHEREFORE, for the reasons set forth in the memorandum described above and the other documents referenced therein, Dey respectfully requests that the Court grant its motion for partial summary judgment and enter an order directing the entry of judgment dismissing, in part, claims asserted against it by Plaintiff State of California and Relator Ven-A-Care of the Florida Keys, Inc.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1, Defendants believes that oral argument may assist the Court in resolving the issues presented in this motion and respectfully requests that oral argument be heard.

Dated: November 25, 2009

Respectfully Submitted:

KELLEY DRYE & WARREN LLP

/s/Sarah L. Reid

Paul F. Doyle (BBO # 133460)

William A. Escobar (*pro hac vice*)

Sarah L. Reid (*pro hac vice*)

Neil Merkl (*pro hac vice*)

Christopher C. Palermo (*pro hac vice*)

Philip D. Robben (*pro hac vice*)

101 Park Avenue

New York, NY 10178

Telephone: (212) 808-7800

Facsimile: (212) 808-7897

Counsel for Defendants Dey, Inc. and Dey, L.P.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by causing to be sent, on November 25, 2009, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Sarah L. Reid

Sarah L. Reid